

Steve W. Berman (Pro Hac Vice)
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
steve@hbsslaw.com

Elizabeth J. Cabraser (SBN 083151)
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008
ecabraser@lchb.com

Adam J. Zapala (SBN 245748)
COTCHETT, PITRE & McCARTHY, LLP
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
azapala@cpmlegal.com

Class Counsel for Indirect Purchaser Plaintiffs

[Additional Counsel Listed on Signature Page]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE LITHIUM ION BATTERIES
ANTITRUST LITIGATION,

Case No. 13-md-02420-YGR

**NOTICE OF MOTION, MOTION, AND
MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR APPROVAL OF
SETTLEMENT PURSUANT TO RULE
23(e)(5)(B)**

This Document Relates to:

Date: March 1, 2022

ALL INDIRECT PURCHASER ACTIONS

Date: March 1, 2022
Time: 2:00 pm
Judge: Hon. Yvonne Gonzalez Rogers
Court: Courtroom 1, 4th Floor

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that on March 1, 2022 or as soon thereafter as the matter may
4 be heard by the Honorable Yvonne Gonzalez Rogers of the United States District Court for the
5 Northern District of California, Oakland Division, located at Courtroom 1, 4th Floor, 1301 Clay
6 Street, Oakland, California, the Indirect Purchaser Plaintiffs (“Plaintiffs”) will and hereby do
7 move the Court for an order approving Plaintiff’s settlement with objector Christopher Andrews
8 (“Objector Andrews”) pursuant to Federal Rule of Civil Procedure (“Rule”) 23(e)(5)(B)(ii). This
9 motion is based on this notice of motion, the accompanying memorandum of points and
10 authorities, the declaration in support of the motion, argument by counsel at the hearing before
11 this Court, any papers filed in response, such oral and documentary evidence as may be presented
12 at the hearing of this renewed motion, and all papers and records on file in this action.

Dated: January 24, 2022

Respectfully submitted,

By: /s/ Adam J. Zapala
ADAM J. ZAPALA

COTCHETT, PITRE & McCARTHY, LLP

Adam J. Zapala (245748)
Tamarah P. Prevost (313422)
Reid W. Gaa (330141)
840 Malcolm Road
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
azapala@cpmlegal.com
tprevost@cpmlegal.com
rgaa@cpmlega.com

By: /s/ Steve W. Berman
STEVE W. BERMAN

HAGENS BERMAN SOBOL SHAPIRO LLP

Steve W. Berman (pro hac vice)
Shana E. Scarlett (217895)
Benjamin J. Siegel (256260)
715 Hearst Avenue, Suite 202
Berkeley, CA 94710

Telephone: (510) 725-3000
Facsimile: (510) 725-3001
steve@hbsslaw.com
shanas@hbsslaw.com
bens@hbsslaw.com

By: /s/ Elizabeth J. Cabraser
ELIZABETH J. CABRASER

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Elizabeth J. Cabraser (083151)
Brendan P. Glackin (199643)
Lin Y. Chan (255027)
Michael K. Sheen (288284)
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008
ecabraser@lchb.com
bglackin@lchb.com
lchan@lchb.com
msheen@lchb.com

Class Counsel for Indirect Purchaser Plaintiffs

TABLE OF CONTENTS

| | Page |
|--|------|
| INTRODUCTION | 1 |
| PROCEDURAL BACKGROUND..... | 1 |
| A. Round 1 Settlement..... | 1 |
| B. Round 2 Settlements | 2 |
| C. Round 3 Settlements | 3 |
| D. Remand Proceedings on the Round 2 Settlements | 3 |
| E. The Proposed Settlement Agreement with Objector Andrews | 4 |
| LEGAL ARGUMENT..... | 5 |
| I. The Proposed Settlement Benefits the Class, Expedites Distribution of the Settlement Funds to the Class, and Promotes Finality..... | 5 |
| II. The Proposed Settlement Is Justified Given Andrews' Work and Contribution | 6 |
| CONCLUSION..... | 8 |

TABLE OF AUTHORITIES

| | |
|---------|---|
| 2 | Page(s) |
| 3 | |
| 4 | Cases |
| 5 | |
| 6 | <i>In re Dental Supplies Antitrust Litig.</i> , No. 16-cv-00696 (E.D.N.Y. Oct. 8, 2019), ECF No. 344 5, 7 |
| 7 | |
| 8 | <i>In re Experian Data Breach Litig.</i> , No. 15-cv-01592 (C.D. Cal. July 3, 2019), ECF No. 335..... 7 |
| 9 | |
| 10 | <i>In re Hyundai & Kia Fuel Econ. Litig.</i> , 881 F.3d 679 (2018)..... 6 |
| 11 | |
| 12 | <i>Indirect Purchaser Plaintiffs v. Bednarz</i> , No. 17-17367, 777 F. App'x 221 (9th Cir. Sept. 16, 2019)..... 2 |
| 13 | |
| 14 | <i>In re Lithium Ion Batteries Antitrust Litig., Indirect Purchaser Plaintiffs v. Andrews</i> , 853 F. App'x 56 (9th Cir. 2020) 3 |
| 15 | |
| 16 | <i>In re Lithium Ion Batteries Antitrust Litig., Indirect Purchaser Plaintiffs v. Christopher Andrews</i> , No. 17-17369 (9th Cir., Feb. 20, 2018) 6 |
| 17 | |
| 18 | <i>In re Volkswagen Timing Chain Prod. Liab. Litig.</i> , No. 16-cv-02765 (D.N.J. Feb. 19, 2019), ECF No. 250 5 |
| 19 | |
| 20 | |
| 21 | |
| 22 | |
| 23 | |
| 24 | |
| 25 | |
| 26 | |
| 27 | |
| 28 | |
| 29 | |
| 30 | |
| 31 | |
| 32 | |
| 33 | |
| 34 | |
| 35 | |
| 36 | |
| 37 | |
| 38 | |
| 39 | |
| 40 | |
| 41 | |
| 42 | |
| 43 | |
| 44 | |
| 45 | |
| 46 | |
| 47 | |
| 48 | |
| 49 | |
| 50 | |
| 51 | |
| 52 | |
| 53 | |
| 54 | |
| 55 | |
| 56 | |
| 57 | |
| 58 | |
| 59 | |
| 60 | |
| 61 | |
| 62 | |
| 63 | |
| 64 | |
| 65 | |
| 66 | |
| 67 | |
| 68 | |
| 69 | |
| 70 | |
| 71 | |
| 72 | |
| 73 | |
| 74 | |
| 75 | |
| 76 | |
| 77 | |
| 78 | |
| 79 | |
| 80 | |
| 81 | |
| 82 | |
| 83 | |
| 84 | |
| 85 | |
| 86 | |
| 87 | |
| 88 | |
| 89 | |
| 90 | |
| 91 | |
| 92 | |
| 93 | |
| 94 | |
| 95 | |
| 96 | |
| 97 | |
| 98 | |
| 99 | |
| 100 | |
| 101 | |
| 102 | |
| 103 | |
| 104 | |
| 105 | |
| 106 | |
| 107 | |
| 108 | |
| 109 | |
| 110 | |
| 111 | |
| 112 | |
| 113 | |
| 114 | |
| 115 | |
| 116 | |
| 117 | |
| 118 | |
| 119 | |
| 120 | |
| 121 | |
| 122 | |
| 123 | |
| 124 | |
| 125 | |
| 126 | |
| 127 | |
| 128 | |
| 129 | |
| 130 | |
| 131 | |
| 132 | |
| 133 | |
| 134 | |
| 135 | |
| 136 | |
| 137 | |
| 138 | |
| 139 | |
| 140 | |
| 141 | |
| 142 | |
| 143 | |
| 144 | |
| 145 | |
| 146 | |
| 147 | |
| 148 | |
| 149 | |
| 150 | |
| 151 | |
| 152 | |
| 153 | |
| 154 | |
| 155 | |
| 156 | |
| 157 | |
| 158 | |
| 159 | |
| 160 | |
| 161 | |
| 162 | |
| 163 | |
| 164 | |
| 165 | |
| 166 | |
| 167 | |
| 168 | |
| 169 | |
| 170 | |
| 171 | |
| 172 | |
| 173 | |
| 174 | |
| 175 | |
| 176 | |
| 177 | |
| 178 | |
| 179 | |
| 180 | |
| 181 | |
| 182 | |
| 183 | |
| 184 | |
| 185 | |
| 186 | |
| 187 | |
| 188 | |
| 189 | |
| 190 | |
| 191 | |
| 192 | |
| 193 | |
| 194 | |
| 195 | |
| 196 | |
| 197 | |
| 198 | |
| 199 | |
| 200 | |
| 201 | |
| 202 | |
| 203 | |
| 204 | |
| 205 | |
| 206 | |
| 207 | |
| 208 | |
| 209 | |
| 210 | |
| 211 | |
| 212 | |
| 213 | |
| 214 | |
| 215 | |
| 216 | |
| 217 | |
| 218 | |
| 219 | |
| 220 | |
| 221 | |
| 222 | |
| 223 | |
| 224 | |
| 225 | |
| 226 | |
| 227 | |
| 228 | |
| 229 | |
| 230 | |
| 231 | |
| 232 | |
| 233 | |
| 234 | |
| 235 | |
| 236 | |
| 237 | |
| 238 | |
| 239 | |
| 240 | |
| 241 | |
| 242 | |
| 243 | |
| 244 | |
| 245 | |
| 246 | |
| 247 | |
| 248 | |
| 249 | |
| 250 | |
| 251 | |
| 252 | |
| 253 | |
| 254 | |
| 255 | |
| 256 | |
| 257 | |
| 258 | |
| 259 | |
| 260 | |
| 261 | |
| 262 | |
| 263 | |
| 264 | |
| 265 | |
| 266 | |
| 267 | |
| 268 | |
| 269 | |
| 270 | |
| 271 | |
| 272 | |
| 273 | |
| 274 | |
| 275 | |
| 276 | |
| 277 | |
| 278 | |
| 279 | |
| 280 | |
| 281 | |
| 282 | |
| 283 | |
| 284 | |
| 285 | |
| 286 | |
| 287 | |
| 288 | |
| 289 | |
| 290 | |
| 291 | |
| 292 | |
| 293 | |
| 294 | |
| 295 | |
| 296 | |
| 297 | |
| 298 | |
| 299 | |
| 300 | |
| 301 | |
| 302 | |
| 303 | |
| 304 | |
| 305 | |
| 306 | |
| 307 | |
| 308 | |
| 309 | |
| 310 | |
| 311 | |
| 312 | |
| 313 | |
| 314 | |
| 315 | |
| 316 | |
| 317 | |
| 318 | |
| 319 | |
| 320 | |
| 321 | |
| 322 | |
| 323 | |
| 324 | |
| 325 | |
| 326 | |
| 327 | |
| 328 | |
| 329 | |
| 330 | |
| 331 | |
| 332 | |
| 333 | |
| 334 | |
| 335 | |
| 336 | |
| 337 | |
| 338 | |
| 339 | |
| 340 | |
| 341 | |
| 342 | |
| 343 | |
| 344 | |
| 345 | |
| 346 | |
| 347 | |
| 348 | |
| 349 | |
| 350 | |
| 351 | |
| 352 | |
| 353 | |
| 354 | |
| 355 | |
| 356 | |
| 357 | |
| 358 | |
| 359 | |
| 360 | |
| 361 | |
| 362 | |
| 363 | |
| 364 | |
| 365 | |
| 366 | |
| 367 | |
| 368 | |
| 369 | |
| 370 | |
| 371 | |
| 372 | |
| 373 | |
| 374 | |
| 375 | |
| 376 | |
| 377 | |
| 378 | |
| 379 | |
| 380 | |
| 381 | |
| 382 | |
| 383 | |
| 384 | |
| 385 | |
| 386 | |
| 387 | |
| 388 | |
| 389 | |
| 390 | |
| 391 | |
| 392 | |
| 393 | |
| 394 | |
| 395 | |
| 396 | |
| 397 | |
| 398 | |
| 399 | |
| 400 | |
| 401 | |
| 402 | |
| 403 | |
| 404 | |
| 405 | |
| 406 | |
| 407 | |
| 408 | |
| 409 | |
| 410 | |
| 411 | |
| 412 | |
| 413 | |
| 414 | |
| 415 | |
| 416 | |
| 417 | |
| 418 | |
| 419 | |
| 420 | |
| 421 | |
| 422 | |
| 423 | |
| 424 | |
| 425 | |
| 426 | |
| 427 | |
| 428 | |
| 429 | |
| 430 | |
| 431 | |
| 432 | |
| 433 | |
| 434 | |
| 435 | |
| 436 | |
| 437 | |
| 438 | |
| 439 | |
| 440 | |
| 441 | |
| 442 | |
| 443 | |
| 444 | |
| 445 | |
| 446 | |
| 447 | |
| 448 | |
| 449 | |
| 450 | |
| 451 | |
| 452 | |
| 453 | |
| 454 | |
| 455 | |
| 456 | |
| 457 | |
| 458 | |
| 459 | |
| 460 | |
| 461 | |
| 462 | |
| 463 | |
| 464 | |
| 465 | |
| 466 | |
| 467 | |
| 468 | |
| 469 | |
| 470 | |
| 471 | |
| 472 | |
| 473 | |
| 474 | |
| 475 | |
| 476 | |
| 477 | |
| 478 | |
| 479 | |
| 480 | |
| 481 | |
| 482 | |
| 483 | |
| 484 | |
| 485 | |
| 486 | |
| 487 | |
| 488 | |
| 489 | |
| 490 | |
| 491 | |
| 492 | |
| 493 | |
| 494 | |
| 495 | |
| 496 | |
| 497 | |
| 498 | |
| 499 | |
| 500 | |
| 501 | |
| 502 | |
| 503 | |
| 504 | |
| 505 | |
| 506 | |
| 507 | |
| 508 | |
| 509 | |
| 510 | |
| 511 | |
| 512 | |
| 513 | |
| 514 | |
| 515 | |
| 516 | |
| 517 | |
| 518 | |
| 519 | |
| 520 | |
| 521 | |
| 522 | |
| 523 | |
| 524 | |
| 525</td | |

INTRODUCTION

Over the course of seven years of arduous litigation against nine of the largest lithium-ion battery manufacturers—including two adverse rulings on class certification—Interim Co-Lead Counsel (“Class Counsel”) secured settlements on behalf of indirect purchaser plaintiffs (“IPPs” or “Plaintiffs”) totaling \$113.45 million to resolve allegations of a broad conspiracy to elevate prices for lithium-ion batteries. On December 10, 2020, the Court granted Plaintiffs’ renewed motion for final approval of the Round 2 settlements with Defendants Hitachi, LG Chem, and NEC, including a revised plan of allocation, and Class Counsel’s renewed motion for attorneys’ fees (“Final Approval Order”), overruling objections from certain class members in the process (“Objectors”). ECF No. 2681. The Court noted, “[t]he reaction of the class favor[ed] approval of the settlement.” ECF No. 2681.

12 Subsequently, Objector Andrews appealed the Final Approval Order and Objector
13 Bednarz appealed the Court’s award of attorneys’ fees. Plaintiffs have now resolved the appeal of
14 Objector Andrews through this proposed settlement. The settlement with Objector Andrews does
15 not come from the settlement fund itself, and thus, does not decrease the amount available for
16 distribution to eligible class members. Moreover, the modest amount of the settlement is less than
17 the annual interest that accrues on the settlement fund as it awaits distribution to class members.
18 There is no scenario under which Andrews’s appeal, if successful, would result in increased
19 recovery for the class. In fact, the settlement averts the possibility that Andrews’s objection
20 would unwind the Round 2 settlements, costing the class tens of millions of dollars. It is also
21 justified under a body of authority that permits compensation to objectors who invest time and
22 energy in assisting in the framing of issues for the Court. The resolution also substantially
23 expedites distribution of long-awaited funds to the class. This settlement is therefore in the best
24 interests of the Class, which has waited nine years to recover for the alleged antitrust violations.

PROCEDURAL BACKGROUND

A. Round 1 Settlement

27 On November 17, 2015, Plaintiffs entered into a settlement agreement with Sony
28 Corporation, Sony Energy Devices Corporation, and Sony Electronics, Inc. (collectively, “Sony”)

1 or “Sony Defendants”) (“Round 1 Settlement”), which the Court preliminarily approved on May
 2 26, 2016. ECF No. 1292. Objector Andrews subsequently objected. ECF No. 1392. Over the
 3 arguments raised by various objectors, including Objector Andrews, the Court ultimately granted
 4 final approval of the Round 1 Settlement on March 20, 2017. ECF No. 2017. Objector Andrews
 5 subsequently appealed to the Ninth Circuit on April 14, 2017, raising arguments essentially
 6 identical to those he raised in his initial objections. ECF No. 1739. On September 4, 2019, the
 7 Ninth Circuit affirmed the Court’s approval order and again overruled Objector Andrews’s
 8 arguments to the Round 1 Settlement. ECF No. 2526.

9 **B. Round 2 Settlements**

10 In late 2016, Plaintiffs reached settlements with Defendants Hitachi Maxell, Ltd. and
 11 Maxell Corporation of America (collectively, “Hitachi”), NEC Corporation (“NEC”), and LG
 12 Chem, Ltd. and LG Chem America (collectively, “LG Chem”). The Court granted preliminary
 13 approval of the Round 2 Settlements on March 20, 2017, directing notice of a proposed *pro rata*
 14 allocation of the settlement funds to the class. ECF No. 1714. On April 12, 2017, after IPPs
 15 commenced their notice campaign to the class and one day after the claims period began for the
 16 Round 2 Settlements, the Court denied certification of IPPs’ proposed nationwide litigation class.
 17 ECF No. 1735. This Court granted final approval of the Round 2 Settlements on October 27, 2017
 18 initially allocating settlement funds on a straight *pro rata* basis to class members regardless of
 19 their state of purchase. ECF No. 2003. Following this, two objectors, including Objector
 20 Andrews, filed appeals to the Round 2 Settlements and Class Counsel’s fee award. ECF Nos.
 21 2034, 2050.

22 The Court denied IPPs’ renewed motion for class certification on March 5, 2018. ECF No.
 23 2197. On September 16, 2019, the Ninth Circuit vacated this Court’s final approval order of the
 24 Round 2 Settlements and Class Counsel’s fee award, remanding the case “to allow the district
 25 court to properly exercise its discretion consistent with Rule 23’s rigorous procedural
 26 requirements.” *Indirect Purchaser Plaintiffs v. Bednarz*, No. 17-17367, 777 F. App’x 221 (9th
 27 Cir. Sept. 16, 2019). The Ninth Circuit also dismissed as moot Objector Andrews’s arguments
 28 pertaining to issues other than those identified in its September 16th order. ECF No. 2532.

1 **C. Round 3 Settlements**

2 While the Round 2 Settlements were pending on appeal, IPPs reached settlements with the
 3 remaining Defendants in the action and sought final approval of the Round 3 Settlements. In
 4 connection with the Round 3 Settlements, after an extensive allocation proceeding ensuring
 5 fairness to class members, IPPs proposed allocating 90% of the settlement proceeds to so-called
 6 *Illinois Brick* repealer states and 10% of the settlement proceeds to qualified class members in
 7 non-repealer states. ECF No. 2516. On August 16, 2019, the Court finally approved the Round 3
 8 Settlements and the foregoing plan of allocation. ECF No. 2516. Objector Andrews appealed the
 9 Round 3 Settlements on September 9, 2019, arguing (as he does in his current appeal) that the
 10 90%/10% allocation was unfair to him and other claimants in repealer states. ECF No. 2527.

11 In an April 23, 2021 opinion—well *after* this Court’s approval and Andrews’ appeal of
 12 renewed the Round 2 settlements and plan of allocation—the Ninth Circuit considered Andrews’s
 13 objection regarding the 90%/10% plan of allocation in connection with the Round 3 settlements
 14 and ultimately overruled it, affirming the Court’s order. ECF Nos. 2527, 2721; *see also In re*
 15 *Lithium Ion Batteries Antitrust Litig., Indirect Purchaser Plaintiffs v. Andrews*, 853 F. App’x 56
 16 (9th Cir. 2020). The Ninth Circuit held, with respect to the plan of allocation, that “the district
 17 court permissibly found that the differential allocation of the settlement between class members in
 18 repealer and non-repealer states was equitable because, although their claims were less valuable,
 19 class members in non-repealer states were still active litigants entitled to minimal recovery.” *Id.* at
 20 58. Further, the Ninth Circuit held, with respect to settlement class certification, that final
 21 approval was appropriate because “the district court’s differential allocation of the settlement
 22 funds to class members in repealer and non-repealer states” mitigated any concern about differing
 23 strength in claims. *Id.* at 57. Although Andrews made contrary arguments, on the record
 24 presented, the Ninth Circuit held there was no abuse of this Court’s discretion under Rule 23. *Id.*
 25 at 57-58.

26 **D. Remand Proceedings on the Round 2 Settlements**

27 Following remand of the Round 2 Settlements, IPPs proposed an allocation plan that
 28 mirrored the one approved by the district court and affirmed by the Ninth Circuit for the Round 3

1 Settlements: allocating 90% of the settlement funds to purchasers from *Illinois Brick* repealer
 2 jurisdictions and 10% to purchasers from the other states. ECF No. 2566. IPPs also moved to
 3 direct notice to the class regarding the Round 2 Settlements and the new proposed plan of
 4 allocation. ECF No. 2566. On January 10, 2020, the Court granted the motion. ECF No. 2571.

5 Plaintiffs again moved for final approval of the Round 2 settlements on May 5, 2020. At
 6 that juncture, without the benefit of the Ninth Circuit's decision regarding the Round 3
 7 settlements and the Plan of Allocation, Objector Andrews again objected on a number of grounds,
 8 including the 90%/10% allocation plan. ECF No. 2696. The Court entered its Final Approval
 9 Order; Order Regarding the Revised Plan of Allocation (including the revised Plan of Allocation
 10 with respect to the Sony settlement), and its Order regarding IPPs' renewed request for attorneys'
 11 fees over objections from certain class members on December 10, 2020. ECF Nos. 2613, 2681.

12 Prior to having the benefit of the Ninth Circuit's decision regarding the Round 3
 13 settlements and the 90%/10% plan of allocation, on January 15, 2021 Objector Andrews again
 14 appealed the Court's order finally approving the Round 2 Settlements. ECF No. 2696. Objector
 15 Andrews raised objections substantially similar to those subsequently rejected by the Ninth
 16 Circuit in connection with the Round 3 settlements.

17 **E. The Proposed Settlement Agreement with Objector Andrews**

18 Following the foregoing, Plaintiffs and Objector Andrews (the "Settling Parties") reached
 19 an agreement whereby Andrews would withdraw his objections and dismiss his appeal in return
 20 for \$25,000 to be paid directly by Class Counsel.¹ The Settling Parties subsequently sought by
 21 stipulated motion, and the Court of Appeals for the Ninth Circuit granted, voluntary dismissal of
 22 Andrew's appeal without prejudice. ECF No. 2726.

23 Per the terms of the settlement agreement, Andrews' payment would not be made using
 24 any money from the Class's settlement fund. *See Ex. 1, Settlement Agreement With Objector*
 25 *Christopher Andrews ("Andrews Settlement"). Class Counsel will effectuate payment to Objector*

26 ¹ As discussed further *infra*, Objector Andrews invested significant time and effort over the
 27 course of this long and arduous litigation. Andrews estimates that in briefing issues before both
 the District Court and the Ninth Circuit, that he has invested approximately 600 hours of his own
 28 time, and approximately \$1,500 in hard costs for travel and accommodation.

1 Andrews no later than forty-five (45) days after (i) the Court approves the settlement, (ii) such an
 2 order from the Court becomes final, and (iii) Objector Andrews's appeal is dismissed with
 3 prejudice. *See* Andrews Settlement ¶ 2. In exchange, Objector Andrews has agreed to a release of
 4 all presently existing objections to the settlements in this action. *See* Andrews Settlement ¶ 3-4.
 5 The Settling Parties accordingly will achieve an outcome that is in the best interest of the class.
 6 Therefore, Plaintiffs seek an order approving this settlement pursuant to Rule 23(e)(5)(B)(ii).

LEGAL ARGUMENT

8 Rule 23(e)(5)(B) requires court approval of payments or other consideration exchanged in
 9 connection with the withdrawing of any objections to a class settlement or the dismissing or
 10 abandoning of any appeals from a judgment approving class settlement. Fed. R. Civ. P.
 11 23(e)(5)(B)(i)-(ii).

12 **I. The Proposed Settlement Benefits the Class, Expedites Distribution of the Settlement
 13 Funds to the Class, and Promotes Finality**

14 Approval of Plaintiffs' settlement with Andrews benefits the class by expediting
 15 distribution of the settlement funds to qualified claimants that would otherwise be delayed
 16 pending resolution of Andrews' appeal. Absent that appeal, Class Counsel would be free to begin
 17 the long-delayed process of distributing funds to the more than one million class members to
 18 whom money is owed and bring this long, arduous litigation to a close. Among the circumstances
 19 supporting this proposed resolution, the first settlement in the sequence (Round 1) was reached
 20 over five years ago. Courts have approved payments to objectors in situations such as this, as the
 21 payment avoids further delay in the distribution of settlement funds. *See* Order at 3, *In re*
 22 *Volkswagen Timing Chain Prod. Liab. Litig.*, No. 16-cv-02765 (D.N.J. Feb. 19, 2019), ECF No.
 23 250 (granting approval of payment because "14,635 claims have been filed by Class Members but
 24 distribution of approved settlement funds is delayed until the Objectors/Appellants' appeals are
 25 resolved"); Joint Motion by Plaintiffs & Objector for Indicative Ruling to Effectuate Terms of
 26 Settlement with Objector & Objector's Counsel ("Joint Motion") at 2-4, *In re Dental Supplies*
 27 *Antitrust Litig.*, No. 16-cv-00696 (E.D.N.Y. Oct. 8, 2019) ("Dental Supplies"), ECF No. 344
 28 (asking court to approve settlement with objector because payment would permit distribution of

1 settlement funds without further delay; motion granted without written opinion on October 17,
 2 2019).

3 Additionally, approval of Plaintiffs' settlement with Objector Andrews protects the class
 4 from the unlikely but possible rescission or vacation of the settlement, preserving a result this court
 5 has recognized is overwhelmingly favored by the class. *See* ECF No. 2681 ("Over one million
 6 class members filed claims. Only four objections were received out of millions of class members,
 7 and only twenty-one class members requested exclusion from the class. The reaction of the class
 8 favors approval of the settlement."). To be clear, Class Counsel view Andrews's appeal as
 9 extremely low risk given prior dispositions by the Ninth Circuit. However, court proceedings
 10 always involve risk, and a possible risk of a successful appeal by Andrews is a complete loss of
 11 the Round 2 proceeds. There is no possibility that a successful appeal by Andrews increases
 12 recovery for class members, given this Court's denial of two separate motions to certify a class
 13 for litigation purposes.

14 **II. The Proposed Settlement Is Justified Given Andrews' Work and Contribution**

15 In addition to the foregoing, the proposed *de minimis* settlement is justified in light of
 16 Objector Andrews's investment of time and effort advancing what he believed to be the interests
 17 of class members. The amount is also proportional to that work and contribution. For example, in
 18 connection with the initial appeal on the Round 2 Settlements and the originally contemplated
 19 straight *pro rata* plan of allocation, Andrews—like Bednarz—raised issues regarding the fairness
 20 of that plan of allocation. In connection with his previous Round 2 appeal, Andrews raised the
 21 Ninth Circuit's panel decision in *In re Hyundai & Kia Fuel Econ. Litig.*, 881 F.3d 679 (2018). *See*
 22 *e.g.*, Andrews' Supplement to Appeal, *In re Lithium Ion Batteries Antitrust Litig., Indirect*
Purchaser Plaintiffs v. Christopher Andrews, No. 17-17369 (9th Cir., Feb. 20, 2018), Dkt. Entry
 23 7. Both Andrews and objector Bednarz made similar arguments to the Ninth Circuit, which
 24 ultimately resulted in vacating the final approval order and the then-existing plan of allocation for
 25 further consideration. This Court awarded attorney's fees to Bednarz in connection with this
 26 appeal and its contribution to the case. ECF No. 2587.

28

1 In similar fashion, in connection with this Court’s consideration of a revised distribution
 2 plan with respect to the Round 1 Settlement with Sony occurring in December 2020, Mr.
 3 Andrews again advocated that a straight *pro rata* plan of distribution was unfair and that the
 4 Court should alter it. *See* Andrews’s Objection to the Distribution Plan at 7, ECF No. 2660. The
 5 Court ultimately altered the plan of distribution with respect to the Sony settlement to the
 6 90%/10% framework. Mr. Andrews has consistently maintained an objection on this topic in
 7 some form since preliminary approval of the Round 1 Settlement was granted. Indeed, in Mr.
 8 Andrews’s initial appeal of the Round 1 Settlement, he argued that the straight *pro rata* plan of
 9 allocation was unfair. *See* Appellant Br. at 19, Case No. 17-15795 (9th Cir. 2017), ECF No. 6.

10 In situations where objectors have helped frame issues for the district court, courts have
 11 approved settlements, such as the one proposed here. *See Order Approving Payment to Objector*
 12 *Pursuant to FRCP Rule 23(e)(5)(B) at 2, In re Experian Data Breach Litig.*, No. 15-cv-01592
 13 (C.D. Cal. July 3, 2019), ECF No. 335 (relying on reasoning in stipulation, that stated, “the
 14 Parties agree that the Objection assisted in framing the issues for consideration by the Court in
 15 connection with settlement approval under Fed. Rule Civ. Pro. 23(e)”); Joint Motion at 3, *Dental*
 16 *Supplies*, ECF No. 344 (“Class Counsel agree that the objection assisted in framing the issues for
 17 consideration by the Court in connection with its approval of the Class Settlement under Fed. R.
 18 Civ. P. 23(e)”; motion granted without written opinion on October 17, 2019).

19 Further, there is no evidence of improper motive by Andrews in taking his appeal or in
 20 resolving his objection to the settlement. The Ninth Circuit’s order affirming the Round 3
 21 Settlements over Objector Andrews’s objections (ECF No. 2721)—issued after Objector
 22 Andrews’s appeal of the Court’s most recent order approving the Round 2 Settlements—has
 23 reshaped his perception of his currently pending appeal. His views have also been shaped by the
 24 Court’s denial of the litigated class certification motion. Given the dynamics of this case and its
 25 complicated procedural history, Objector Andrews now agrees that his continued pursuit of his
 26 appeal, especially given the district court’s denial of a litigated class certification motion and the
 27 additional risks present in the litigation, is no longer in the best interests of the class.

28

This resolution therefore protects the common fund; accelerates payment to the class; and does not deprive the class of any possible additional recovery that might flow from a successful appeal. It is also justified as an award for the time and energy invested in the case by Objector Andrews. Indeed, the resolution proposed here is comparable to the service awards to other class representatives in this matter.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully move this Court for an order approving the proposed settlement with Christopher Andrews.

Dated: January 24, 2022

Respectfully submitted,

By: /s/ Adam J. Zapala
ADAM J. ZAPALA

COTCHETT, PITRE & McCARTHY, LLP

Adam J. Zapala (245748)
Tamarah P. Prevost (313422)
Reid W. Gaa (330141)
840 Malcolm Road
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
azapala@cpmlegal.com
tprevost@cpmlegal.com
rgaa@cpmlega.com

By: /s/ Steve W. Berman
STEVE W. BERMAN

HAGENS BERMAN SOBOL SHAPIRO LLP

Steve W. Berman (pro hac vice)
Shana E. Scarlett (217895)
Benjamin J. Siegel (256260)
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
steve@hbsslaw.com
shanas@hbsslaw.com
bens@hbsslaw.com

1 By: /s/ Elizabeth J. Cabraser
2 ELIZABETH J. CABRASER

3 **LIEFF CABRASER HEIMANN & BERNSTEIN, LLP**
4 Elizabeth J. Cabraser (083151)
5 Brendan P. Glackin (199643)
6 Lin Y. Chan (255027)
7 Michael K. Sheen (288284)
8 275 Battery Street, 29th Floor
9 San Francisco, CA 94111-3339
10 Telephone: (415) 956-1000
11 Facsimile: (415) 956-1008
12 ecabraser@lchb.com
13 bglackin@lchb.com
14 lchan@lchb.com
15 msheen@lchb.com

16 *Class Counsel for Indirect Purchaser Plaintiffs*

17 **FILING ATTESTATION**

18 Pursuant to Civil Local Rule 5-1(i)(3), I, Adam J. Zapala, attest that all signatories listed,
19 and on whose behalf the filing is submitted, concur in the filing's content and have authorized the
20 filing.

21 /s/ Adam J. Zapala

22 Adam J. Zapala
23 Cotchett, Pitre & McCarthy, LLP